Inherent.Com v. Martindale-Hubbell et al Doc. 19

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

INHERENT.COM aka INHERENT, INC., Plaintiff, vs. MARTINDALE-HUBBELL, LEXIS/NEXIS INC. and Does 1 through 200 inclusive, Defendants,	Docket No. C 3:05-cv-03515 MHP **DECLARATION OF DEBRA KAMYS IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS OR TRANSFER** **Date: October 31, 2005** **Time: 2:00 p.m.** **Dept: 15**

I, Debra Kamys, declare as follows:

1. I am the president of Inherent.Com, Inc., the Defendant in the above entitled action.

2. I make the following statements from personal knowledge, unless otherwise stated. I can and will competently testify to the matters contained in this declaration if called upon to do so.

3. INHERENT.COM, INC. (hereinafter "ICI") did have a previous business relationship with MARTINDALE-HUBBELL (hereinafter "MH") prior to the facts surrounding this action filed by MH.

4. The Alliance Agreement referred to in the declarations of Michael Little and Timothy Corcoran is no longer in effect as to ICI and MH.

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5. The dispute which is the subject of this action does not arise out of any services performed or contemplated under the Alliance Agreement between ICI and MH.

6. The services performed since 2002 have nothing to do with the declaratory relief action filed by Plaintiff.

7. No agreement existed between the parties identifying that any disputes surrounding the potential sale of ICI's assets to MH would be litigated in New Jersey. This term was never agreed upon by ICI, and never would be, because traveling the distance from where ICI is incorporated and practices business to New Jersey, would be unduly expensive to protect ICI's interests in the face of a dispute.

8. In addition, ICI has moved its principal place of business to California in early July, prior to the filing of REED's complaint dated July 18, 2005. This move is reflected by the business registration certificate of ICI to practice business in San Francisco attached hereto as Exhibit A. All of ICI's documents relevant to the facts in dispute are located in California.

9. ICI does no substantial business in New Jersey. Based upon the contacts ICI has with New Jersey, it was not anticipated that ICI would have to litigate in the State of New Jersey.

10. The relevant agreements to this action, including the Non-Disclosure Agreement and Letter of Interest, were executed by ICI in Oregon. Furthermore, MH's representative signed the Non-Disclosure Agreement while in Oregon, during meetings MH had requested to discuss its potential acquisition of ICI.

11. MH traveled to Portland, Oregon, in November of 2004 and again in February 2005, then again in June of 2005. ICI and MH also met in Phoenix in May. The only trip made by a representative of ICI to New Jersey, with respect to the facts at issue, was at the request of MH, and paid for by MH.

12. Communications regarding the acquisition of ICI by MH went both ways. MH sent voluminous amounts of e-mails, and made numerous phone calls to Portland, Oregon from New Jersey, regarding this acquisition.

13. Regarding the facts presented by MH's decision to terminate the purchase negotiations with ICI, contained in paragraph 14 of the declaration of Michael Little, ICI responds as follows:

a. As to point (i) MH had full knowledge of ICI's technology prior to the execution of the Letter of Interest based upon disclosures made on 11/2/04 to MH's representatives (Michael Little, Carlton Dyce, and others) during their visit to ICI; furthermore, written documentation of ICI's technology systems was provided on 5/17/05, with no changes being made between that date and the dates of the formal "Due Diligence" visit to Portland, Oregon in June 2005; MH had ample time to withdraw from negotiations prior to the June 2005 visit if concerns about ICI's technology were serious;

b. As to point (ii) the financials of ICI were disclosed in writing to MH in February of 2005 and then again on 6/8/05. Both disclosures were made prior to the formal "Due Diligence" on-site visit to ICI in Oregon in June of 2005, and ample time was allowed for MH to withdraw from negotiations if concerns about ICI's financial situation were serious. Of specific note, the negotiations for acquisition were limited to the purchase of ICI's assets, not liabilities, and this was discussed between the parties;

c. As to point (iii) ICI disclosed its client list to MH on 6/8/05; ample time was allowed for MH to withdraw from negotiations if concerns about ICI's client list were serious; and

d. As to point (iv) there was no danger as to the employees of ICI competing with the interest of MH. These agreements could have been obtained with little effort, and had already been agreed to by the employees of ICI. MH did not offer ICI the opportunity to remedy the situation by obtaining said agreements. In addition, ICI lost its Chief Technology Representative, Mark Holm, referred to in the declaration of Michael Little, due to the bad feelings caused by the negotiations with MH; Mark Holm is in the business of **Information Technology**, not Web Services, which are the subject of the agreement between ICI and MH.

These points are also contained in correspondence, attached as Exhibit B, sent to MH in July 2005 in an attempt to informally resolve the issues surrounding the potential lawsuit prior to MH's filing of the instant retaliatory lawsuit.

14. During the time that the elements in MH's Letter of Interest were discussed/negotiated, ICI requested earnest money to be paid by MH in the event that the transaction was not completed. MH responded that they would go "one better" by paying the purchase price in two installments instead of the originally-proposed three installments. ICI has evidence of this conversation.

15. The majority of ICI's witnesses to the relevant transaction are located on the West Coast, in either Oregon or California. I, and my husband Jeffrey, who are witnesses to the events surrounding the potential acquisition of ICI by MH, are located in California. At least seven other relevant witnesses are located in Oregon (Charles Van Rossen, David Heinen, Mark Holm, William Weigel, Kary Boothroyd, Matt Hickerson and Chris Roberts), as well as Renée Sweany, who is located in Indiana.

16. With respect to the electronic communications, all of these communications are accessible anywhere in the country.

17. MH's Letter of Interest included a requirement that ICI not sell any products or services to "lawyers, law firms or bar associations or others acting on behalf of those types of customers" for the duration of the Due Diligence period. MH terminated negotiations on 6/28/05, so ICI was put in a position of having very low sales for nearly five weeks. This has been extremely damaging to the business of ICI, as it is now very behind in collecting monies from its clients. As a result, ICI is not in a financial position to travel to New Jersey for litigation.

18. Based upon the above, it would be extremely expensive and burdensome for ICI to litigate in a distant state, particularly when the facts surrounding the transaction demonstrate that the majority of efforts surrounding the transaction were taken outside of New Jersey, but in Portland, Oregon. Due to the fact that two key individuals from ICI – along with the business headquarters including documents, etc. – have moved to San Francisco, we have requested a change of venue to California in the New Jersey action.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 10th day of October 2005, in San Francisco, California.

[signature]

DEBRA KAMYS